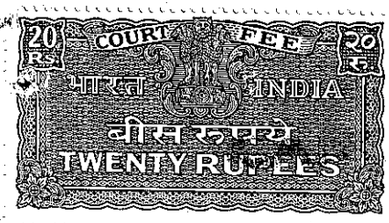
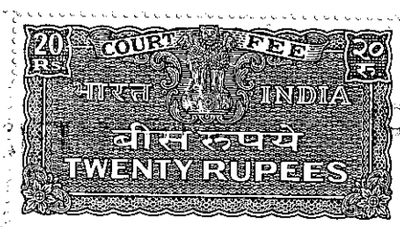
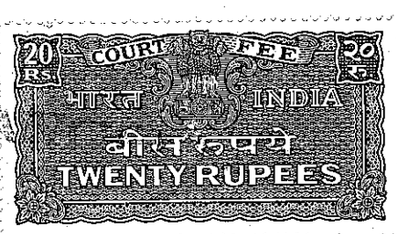






(3)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

WRIT PETITION NO. 5897 OF 2000

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

Smt. Uttrabai aged 26 yrs wife of Shri Makhanlal, resident of Damapur, Tehsil Pandariya, DISTRICT KAWARDHA.....PETITIONER

VERSUS

1. State of Madhya Pradesh through the Secretary, Mahila Avam Bal Vikas, Vallabh Bhawan, BHOPAL.

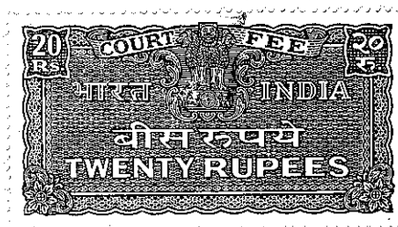
2. Janpad Panchayat, Pandariya, DISTRICT KAWARDHA, through its Chief Executive Officer.

3. Commissioner, Raipur Division, RAIPUR.

4. Collector, KAWARDHA.

5. Naib Tehsildar, Sub Tehsil Kunda, DISTRICT KAWARDHA.

6. Shri Ramesh Kumar son of not known, resident of Damapur, Tehsil Pandariya, DISTRICT KAWARDHA.....RESPONDENTS



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\HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 5895 of 2000

Petitioner : Smt. Uttarabai

Versus

Respondents : State of Madhya Pradesh, through the Secretary, Mahila Avam Bal Vikas & others

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Shri P.K. Bhaduri, counsel for the petitioner.
Shri N.K. Agrawal, Deputy Advocate General with Shri Satish Gupta, Deputy Government Advocate for the respondents No. 3 to 5.
None appears for the respondents No. 1 and 6.

ORDER

(17th November, 2006)

1. The petitioner was appointed as Anganwadi Worker/Helper and was posted at Damapur, by order dated 19.3.1998 (Annexure P/3). The petitioner was removed from service, by order dated 5.5.1999 (Annexure P/10), on the ground that there was irregularity in the appointment of the petitioner, as her relative is an office bearer of village/Janpad Panchayat, Damapur.

2. Being aggrieved, the petitioner preferred an appeal before the Commissioner (Revenue), Raipur. The Commissioner, after having considered, dismissed the appeal vide order dated 29.2.2000 (Annexure P/11).

3. Being aggrieved, the petitioner has filed this writ petition under Article 226/227 of the Constitution of India seeking a writ/direction to quash the impugned orders dated 5.5.1999

(Annexure P/10) passed by the respondent No. 4 and 29.2.2000 (Annexure P/11) passed by the respondent No. 3.

4. The main contention of the petitioner is that the respondents/authorities have not followed the procedure prescribed under the executive instructions dated 27.5.1996 (Annexure P/1), whereby it is clearly provided that before removing the Anganwadi Workers/Helpers, the procedure prescribed is that in case of serious complaint against the Anganwadi Workers/Helpers, the concerned Gram Panchayat would be required to pass a resolution for the same and be sent to the Supervisor. The Supervisor, after having examined the complaint, would take steps for removal of the Anganwadi Workers/Helpers. It is no where provided that the concerned employee is to be heard or an opportunity of hearing be afforded to him before imposing the punishment of removal.

5. It is well settled principle of law that any order, which is punitive in nature and visits with civil consequences, has to be passed after affording proper opportunity of hearing to the concerned employee, the principle of natural justice and fair-play in action is only unveiling all the administrative orders, even if the circular does not prescribe from the same. The principle of natural justice has to be followed in all the cases where any order, which is punitive in nature, is passed.

6. In the facts of the present case, it is admitted position that brother-in-law of the petitioner namely Dhanawa Ram was Up-sarpanch in the same Gram Panchayat i.e. Gram Panchayat, Damapur. In such situation, it is not necessary to hold the

(42)

enquiry, as the order is not passed on the basis of any complaint or serious irregularities.

7. The circular dated 27.5.1996 (Annexure P/1) clearly provides that no person, who is near relative or either government employee or elected or nominated member of the office bearer of the Panchayat Raj Institute or local bodies, would be appointed as Anganwadi Workers/Helpers. However, Anganwadi workers/helpers are appointed as pancyayat worker within a particular area and as such the definition of relative can be taken from the provisions of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "the Adhiniyam, 1993"). The word "relative" used in the Adhiniyam, 1993 is in *Pari-Materia* with the word "relative" used in the circular. "The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject" (Principles of Statutory Interpretation by Shri Guru Prasanna Singh, Tenth Edition, 2006, page 278). "Relative" has been defined in Section 69 of the Adhiniyam, 1993, which reads as under:-

> "69. [2][Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.
>
> Explanation.- for the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, brother-in-law, sister-in law, son-in-law, daughter-in-law.]"

8. In the case of **Viveka Nand Sethi vs. Chairman, J & K Bank Ltd. and others**[1], the Supreme Court observed in para 22 as under :-

> "22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.)* v. *Dr. Sumitra Dash*[3].] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab* v. *Jagir Singh*[4] and *Karnataka SRTC* v. *S.G. Kotturappa*[5].)"

9. There is no doubt or conflict on the point that the petitioner's near relative i.e. brother-in-law is elected Up-sarpanch of the same Gram Panchayat and as such she was not entitled to hold the post. Therefore, disqualified for being posted as Anganwadi worker. The fact of being "relative" of elected Up-sarpanch is admitted and as such an enquiry would be an empty formality.

10. For the reasons stated-above, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

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[1](2005) 5 SCC 337]